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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH / CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACOB ORTELL KINGSTON,

Defendant.

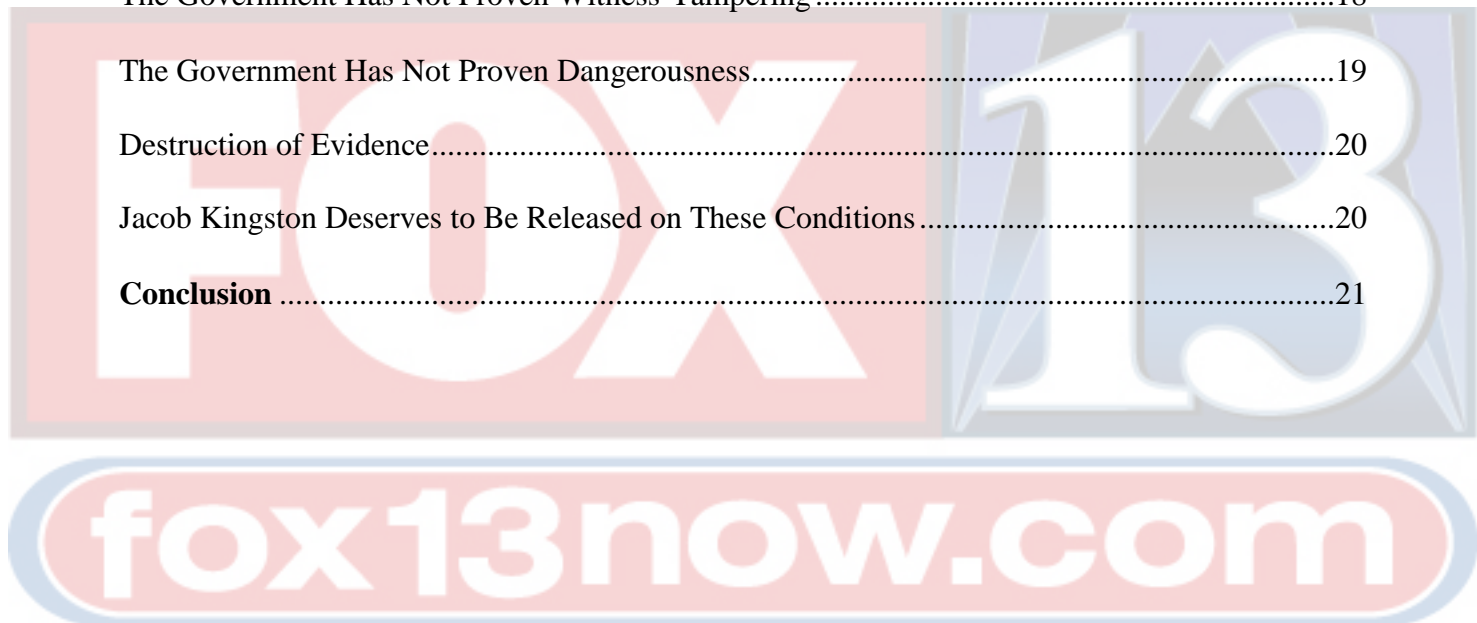
**MOTION FOR PRETRIAL RELEASE
ON CONDITIONS**

Case No. 2:18-cr-00365-JNP-BW

District Judge Jill N. Parrish
Magistrate Judge Brook C. Wells

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Preliminary Statement

The defendant, Dr. Jacob Ortell Kingston, through his counsel, moves this Court for an Order releasing him on rigorous conditions set forth below so that he can better work with his counsel to defend the charges against him.¹ This is Jacob Kingston's first application for release on conditions.

1. Introduction to Jacob Kingston

Jacob Kingston is a success story. A bright, motivated student, he previously worked as an educator at the University of Utah, where he secured a PhD in 2006. He is a loving husband and father of thirteen children, grandfather of eleven grandchildren, all of whom live in Utah. He has also built a successful business in the area of renewable energy. The company, Washakie, owns, among other property, a plant in Plymouth, Utah as well as a facility in Kuala Lumpur, Malaysia that packages palm oil, which it distributes throughout Asia, Africa and the Middle East. Having established Washakie and related companies, Kingston expanded his business portfolio to include a number of entities in Turkey, a popular emerging market and an investment destination for many business-people. These Turkish business interests will be further described below.

2. The Government's Allegations

As has been stated on the record in prior proceedings, the Government has brought a sweeping, complex series of charges against Dr. Kingston. However, despite the admitted great breadth of the charges, these charges are deeply flawed, as will be briefly explained below. The volume of discovery is formidable, amounting to several million pages of material. However, despite the size and scope of the case, this is at bottom a tax case. It is a somewhat unusual tax

¹ While Dr. Kingston's two co-defendants have previously made motions for release on conditions, Kingston has not yet made such a motion, and does so now for the first time.

case because the Government's evidence appears to be highly dependent on witnesses, more particularly on cooperating witnesses, rather than on documents implicating a defendant in tax crimes. The gravamen of the Government's case is comprised of people who themselves own or control renewable energy companies who have been caught, prosecuted and pleaded guilty to tax schemes independent of anything involving Kingston. Many of these people, facing decades in prison, have now implicated Kingston as being complicit in criminal activity for which they have pleaded guilty. We anticipate that the self-serving statements of these witnesses will not be corroborated by objective, independent evidence. On the contrary, we anticipate that the more objective forms of evidence, such as records maintained by Washakie and other entities, will demonstrate that Kingston in fact produced, imported or exported the types and quantities of fuels claimed, or that if the requisite amount of biodiesel was not created, this was not the result of Kingston's own conduct and was done without his knowledge or knowing participation. The records will show that Kingston did not defraud the Internal Revenue Service or the Environmental Protection Agency, and that if he claimed that one of his facilities produced, imported or exported a certain amount of a certain type of fuel, that this was in fact the case.

The Government appears at times to not fully comprehend how the system of tax incentives for biofuels operated, and also appears at times to not fully understand the difference between the RINs on the one hand and IRS tax credits on the other. To the extent that the Government at times may not fully understand these programs or how they inter-relate, the Government can be forgiven as these programs are maddeningly difficult to understand and to apply in the real world.²

² While these renewable fuel programs were politically useful to certain politicians who were able to announce U.S. independence from foreign oil and that the U.S. was creating environmentally-conscious fuel sources, the details were devilishly difficult to understand and apply. This will be a shown throughout the trial evidence.

The Government's sweeping tax case against Kingston suffers from considerable deficits in proof and, at times, seems to completely miss the mark. As noted above, the Government will rely heavily on cooperating witnesses who have either not been truthful with the Government or otherwise fail to have accurate information about central aspects of this case.

Of course, we expect the Government to respond that its case is overwhelming and that its cooperating witnesses are amply corroborated by records and other evidence. Nonetheless, this is precisely why we have been having jury trials in this country for over 200 years. The Government, well-represented by experienced trial lawyers, have one view; we on the defense have a very different view; and the jury will one day decide. In the meantime, this is an immensely difficult case to prepare for trial, and one where the defense preparations would be greatly enhanced by having the defendant at liberty to meet with his lawyers not in a jail setting.

Introduction and Proposed Conditions of Release

Because Dr. Kingston is presumed to be innocent, the Supreme Court has observed that "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."

United States v. Salerno, 481 U.S. 739, 755 (1987). When deciding an issue of pretrial release, Utah courts express a strong preference for release pending trial. United States v. Wright, 18 CR 336 (DN), 2018 LEXIS 121974 at *6 (D. Utah, July 20, 2018). Indeed, the Bail Reform Act requires that the Court impose "the least restrictive...condition, or combination of conditions, that will...reasonably assure the appearance of the person as required and the safety of the community." 18 U.S.C. § 3142(c)(1)(B). As this is not a case where Kingston is charged with a statute triggering a presumption of detention, the Government bears the burden establishing risk of flight by a preponderance of the evidence and danger to the community by clear and convincing evidence. United States v. Cisneros, 328 F.3d 610, 616 (10th Cir. 2003)

With these legal principles in mind, counsel for Dr. Kingston offers the following conditions³ that we respectfully submit are more than sufficient to ensure his appearance during this case and would eliminate any potential danger asserted by the Government:

- (1) A \$10M bond signed by Dr. Kingston;
- (2) The bond will also be co-signed by 45 members of Kingston's family who exert powerful moral suasion over him, including all six of his adult children (the identities of whom will be provided in a non-public filing);
- (3) The bond will be fully secured by equity in real property owned by members of Kingston's family who again exert powerful moral suasion over him (the addresses will be provided in a non-public filing);
- (4) Kingston will be on full home incarceration at his home;
- (5) Kingston will be electronically monitored with a GPS device that will be attached to his body and will record and transmit his every movement;
- (6) Kingston's travel will be restricted to the District of Utah;
- (7) Kingston will surrender of all travel documents, and will not secure new travel documents;
- (8) Kingston's wife and children will surrender their travel documents and will agree to not secure new travel documents;
- (9) That Kingston shall not contact directly or indirectly any witness in this case; however, this does not limit the defense attorneys and their investigators from conducting appropriate defense investigation, consistent with the protective order signed by the Court;
- (10) That Kingston will not have contact with any of his current co-defendants aside from joint defense meetings attended by counsel; and
- (11) Strict pre-trial services supervision.

³ Prior to submitting this motion to the Court, the proposed conditions were submitted to the Government to determine whether we could move on consent of the parties. However, as the Government has indicated in Court, there are no conditions under which the Government will agree to the defendant's release. Accordingly, this very substantial package was rejected by the Government.

Given these highly rigorous conditions, there is no realistic prospect that Kingston will either flee or be a danger to any witness, any person or to the community in general. The question of course is not whether Kingston is a danger or a flight risk as a general matter. Rather the question is whether he remains a danger or a flight risk even after the Court imposes highly rigorous conditions of the type set forth above. To put an even finer point on the issue, the question is whether in light of the rigorous conditions outlined above, the Government can nonetheless sustain its burden to show danger by clear and convincing evidence and serious risk of flight by a preponderance of the evidence. First, the Government must establish by a preponderance of the evidence that the defendant would present an actual and serious risk of flight. If the Government satisfies this first burden, it must then “demonstrate by a preponderance of the evidence that no condition or combination of conditions could be imposed on the defendant that would reasonably assure his presence in court.” The same is true with the element of danger. The Government must prove by clear and convincing evidence that even with the conditions proposed, Dr. Kingston would somehow continue to be a danger to the community or in regard to witnesses.

Once the Court imposes the restrictive conditions above, there is no realistic probability, much less a serious risk, that Dr. Kingston will flee or pose a danger, and the Government simply cannot bear its burden to prove the contrary. Rather, once the above conditions are imposed, the Bail Reform Act mandates the defendant’s release on such conditions.

While the release conditions of similar cases is of course not dispositive, it is worth noting that defendants with charges similar to Kingston’s have been released pretrial on conditions:

Case	Terms of Bond (in additional to the standard conditions)
<u>United States v. Andre Bernard</u> , 17 CR 61 (FtM)	<ul style="list-style-type: none"> • \$1 million secured by one property. This bond was signed by the surety, Paula Bernard; • Travel was restricted to the Middle District of Florida, Southern District of Florida, Southern District of New York, Eastern District

	of New York, District of Connecticut, District of Columbia, Northern District of California, and the District of Utah.
<u>United States v. Brian Carmichael</u> , 13 CR 194 (SEB)	<ul style="list-style-type: none"> • Must avoid all contact with co-defendants and any person who may be a victim or witness; • Travel was restricted to the District of Oregon and the Southern District of Indiana.
<u>United States v. Thomas Davanzo</u> , 15 CR 3228	<ul style="list-style-type: none"> • \$1 million secured by property; • Home incarceration; • Travel was restricted to the Middle District of Florida.
<u>United States v. Robert Fedyna</u> , 15 CR 141 (FTM)	<ul style="list-style-type: none"> • \$2 million bond secured by one property; • Electronic monitoring on home detention in Florida; • Surrender any passport and agree not to obtain a new passport.
<u>United States v. Chad Ducey</u> , 13 CR 189 (SEB)	<ul style="list-style-type: none"> • Must avoid all contact with co-defendants and any person who may be a victim or witness; • Travel was restricted to the Southern District of Indiana.
<u>United States v. Joseph Furando</u> , 13 CR 72777	<ul style="list-style-type: none"> • \$2 million secured by a property; • Surrender passports and agree not to obtain a new passport; • Must avoid all contact with co-defendants and any person who may be a victim or witness; • Home incarceration.
<u>United States v. Christopher Ducey</u> , 13 CR 189 (SEB)	<ul style="list-style-type: none"> • Must avoid all contact with co-defendants and any person who may be a victim or witness; • Travel was restricted to the Northern and Southern District of Indiana.
<u>United States v. Craig Ducey</u> , 13 CR 189 & 13 CR 190	<ul style="list-style-type: none"> • Must avoid all contact with co-defendants and any person who may be a victim or witness; • Travel was restricted to the Northern and Southern District of Indiana.
<u>United States v. Nancy Bush-Estes</u> ; 15 CR 6047 (SMJ)	<ul style="list-style-type: none"> • The Defendant shall remain in the USA while the case is pending.
<u>United States v. Richard Estes</u> , 15 CR 6048 (SMJ)	<ul style="list-style-type: none"> • The Defendant shall remain in the state of Washington while the case is pending.
<u>United States v. Jeffrey Gunselman</u> , 12 M 718	<ul style="list-style-type: none"> • \$100,000 with the Defendant's mother and father signing as sureties; • Defendant not to open any new lines of credit on bank accounts • Travel was restricted to the Northern District of Texas and Lubbock County, Texas.
<u>United States v. Rodney Hailey</u> , 11 CR 540	<ul style="list-style-type: none"> • Travel was restricted to the USA
<u>United States v. Donald Holmes</u> , 15 CR 6044 (SMJ)	<ul style="list-style-type: none"> • Travel was restricted to the USA

Summary

Kingston's Connection to Turkey

The Government has stated in court repeatedly that Jacob Kingston is a flight risk because he was fleeing to Turkey when he was arrested. As recently as December 18, 2018, in response to the Court's question of why the Government returned the first indictment when it did – since it was not close to being prepared to try the case – the Government yet again replied that it returned the first indictment when it did because Jacob Kingston was about to flee to Turkey:

THE COURT: If you've always anticipated it and you've had the discovery, why are we doing this piecemeal? Why are we doing an indictment and a superseding indictment, and a second one? Why didn't you just do it?

MR. EWENCZYK: Very simply, Your Honor, the government had an ongoing investigation and received evidence and information that the defendants were going to flee. In particular, Mr. Jacob Kingston was arrested at the Salt Lake City Airport about to board a plane going to Turkey. And given all the facts that Your Honor has heard about in the detention hearings and as Your Honor has ruled, these defendants are a risk of flight. So the government acted and arrested these defendants, particularly Mr. Jacob Kingston, who was about to flee the jurisdiction.

(12/18/18 Tr. at p. 44.) This statement – which has been central to its argument that Jacob Kingston is a flight risk - is provably false.

The first Indictment was filed on August 1, 2018. It was sealed on that date and was assigned to Your Honor. On August 20, 2018, nineteen days after the Government returned the Indictment, Jacob Kingston bought airline tickets for himself and several of his family members because his son, Joseph Kingston, and daughter-in-law, were traveling to the city of Bodrum, Turkey, for their honeymoon.

Bodrum is a popular tourist destination as it features world-renown beaches on the Mediterranean Sea. Another of Jacob Kingston's children had previously traveled to Bodrum for

his honeymoon, and Jacob's son wanted to honeymoon in this famously beautiful beach destination as well.

The attached email chain between Travelocity, Jacob Kingston and Sally Kingston is dispositive evidence of these travel plans, including of when this trip was booked, which was on August 20, 2018. (See Exhibit 1). As Exhibit 1 shows, on August 20, 2018 at 6:40 pm, Travelocity.com sent Jacob Kingston an email confirming a travel itinerary. The itinerary indicates that six people were traveling: (i) Jacob Kingston, (ii) his wife, Sally Kingston, (iii) Joseph Kingston, (iv) Kayla Kingston, (v) Jacob Daniel Kingston and (vi) Jenny Kingston. Jacob Kingston's credit card records (see Exhibit 2) further indicate that he booked, and paid for, the travel arrangements on August 20, 2018. In particular, the credit card records show that on August 20, 2018, Jacob Kingston incurred charges on his credit card for the travel of the same six people that appear in the email from Travelocity.com. Therefore, there can be no dispute that Jacob Kingston booked this trip on August 20, 2018, a full 19 days after the sealed indictment was returned. Therefore, the Government's contention that it indicted Kingston because he was about to flee to Turkey is impossible, as he had not yet booked the trip at the time the Indictment was returned.⁴

The itinerary further indicates that on August 23, 2018, these six people would leave Salt Lake City en route to Amsterdam on KLM flight 6026, operated by Delta Airlines. At the time, there were, and still are, only a couple of direct flights from Salt Lake City to Europe, and no direct flights to Turkey. Amsterdam is one of the common entry points for people traveling to Europe from Salt Lake City, the other being Paris. From Amsterdam, these six people were booked to

⁴ This is buttressed by the fact that just two months earlier, in June of 2018, Dr. Kingston bought a round trip ticket to Istanbul and returned. (See Exhibit 4, June 2018 Flight to Turkey.)

travel to Istanbul. From Istanbul, these same six people were scheduled to travel to Bodrum on August 24, 2018. (See Exhibit 1 at pg. 8; Exhibit 3, Travelocity Trip Summary.)

On Saturday, September 1, 2018, the itinerary indicates that the same six people were scheduled to travel from Istanbul back to Amsterdam, and then from Amsterdam to Kuala Lumpur, Malaysia, where, as noted, Kingston has maintained a plant that produced palm oil (oil from palm trees) for several years. Travel records show that Jacob Kingston regularly travels to Kuala Lumpur to tend to, and oversee, that facility.

Significantly, on September 6, 2018, the itinerary indicates that the same six people were scheduled to travel from Kuala Lumpur back to Amsterdam, and then from Amsterdam back to Salt Lake City.

Based on this travel itinerary, several points emerge, each of which cut against the core of the Government's argument that Jacob Kingston was fleeing to Turkey. First, Jacob Kingston booked, and paid for, a series of flights that concluded with him and the others returning to Salt Lake City on September 6, 2018. (Exhibit 1 at p. 6.) If he was truly running from this case, there

is no reason to book, and pay for, a return ticket to Salt Lake City. Rather, he booked round-trip air travel because this was a family vacation. Second, he was traveling with five other family members to all the destinations set forth, including what is clearly a tourist destination of the sort one would expect of a family vacation. Third, he and his wife, Sally Kingston, were among the people traveling, while the couple had their thirteen children at home waiting for them to return. If Jacob Kingston were in the process of fleeing, rather than taking a family vacation, he would not take his wife with him, leaving thirteen children in Utah. Fourth, this trip was booked and paid for nearly three weeks after the Government returned the first Indictment. This is conclusive proof

that the Government did not, as it has repeatedly maintained, indict the case because Jacob Kingston was about to flee to Turkey.

Instead, this evidence reveals that the Government did something far more sinister. The Government knew that Jacob Kingston went to Turkey and Asia from time to time. It clearly knew this because it knew that he regularly traveled to these locations to monitor his business interests in that country.⁵ The Government knew that he had just traveled to Turkey and returned both in May and June of 2018. (See Exhibit 5, May 2018 Flight; Exhibit 4, June 2018 Flight.) Therefore, it indicted the case on August 1, 2018 and then the Government waited for him to book travel to Turkey, which, as set forth above, he did on August 20, 2018 along with five other family members. The Government then made the strategic decision to arrest him as he and his family were boarding the flight specifically so it could one day argue – which it has time and again – that Jacob Kingston was fleeing to Turkey and that the Government was compelled to hastily cobble together an indictment to arrest him before he had the chance to flee.

Clearly, the Government knew where Jacob Kingston was at all times between the return of the Indictment on August 1, 2018 and August 23, 2018, when he and his family boarded a flight to Turkey. But, the Government strategically did not arrest him during this three-week period because the Government knew that eventually, Jacob Kingston would travel overseas, as he always does, and the Government wanted to be able to argue that he was fleeing.

It is interesting to note that on August 21, 2018, Jacob Kingston travelled by plane from Salt Lake City to Houston, Texas. He booked the flight on an American Express card, rented a car in Houston, and then flew back to Salt Lake City. (See Exhibit 6, SLC to Houston Flights.) The Government sat back and let him go on this flight because it was a domestic flight, and arresting

⁵ The Grand Jury has subpoenaed his travel records in connection with this investigation.

him off of a domestic flight did not have the same impact in terms of risk of flight as arresting him off a flight to Turkey. So, the Government allowed him to travel domestically, even though it had a warrant for his arrest, but did not arrest him until he was about to board an international flight.

Plainly, Jacob Kingston was not fleeing. Had the Government really believed Kingston was about to flee, it would not have allowed him on any flight. Also, the Government knew he was not fleeing, because, among other reasons, he purchased round trip air travel, a fact that it has NEVER told this Court. Also, the Government was not forthright with the Court when it argued that it indicted the case specifically to stop Jacob Kingston from fleeing. Simply put, the Government has created a ruse. It manufactured a situation where it could plausibly argue that Kingston was fleeing the United States and that he and the other defendants should be detained due, in part, to this risk of flight. However, as often happens with ruses, they are eventually dispelled by the evidence, as this one now has been. Nothing about the Government's account now makes any sense. The timing, the round-trip airfare, the fact that the family was traveling to a tourist destination, all of it reveals that the Government's position, central to its bail application, has been completely disproven.

Once it is established that Jacob Kingston was not fleeing to Turkey in August 2018 – and we respectfully submit it has now been so established – the Court will understandably want to know about the nature of Kingston's business interests in Turkey. Before delving into specifics, it should be noted that over the past fifteen years, Turkey has been a popular country for foreign investment due to, among other things, its economy, its central geography, and its relatively young and educated work-force population. Between 1973 and 2002, there was about \$15 Billion in

foreign investment in Turkey. Between 2003 and 2017, that number grew to over \$193 Billion.⁶ In this regard, Kingston invested and had interests in Turkish companies for the same reason that many other business people did, specifically because Turkey promised investment opportunity that was hard to find in other countries.

As noted, Jacob Kingston has several business interests in Turkey. In particular, he is the Chairman of the Board of a company called Mega Varlik Yonetim A.S., a limited liability company under Turkish law, created in the Spring of 2015. The company, which is licensed by the Turkish Banking Regulation and Supervision Agency, is authorized to, and is in the business of, assuming non-performing mortgage loans from other financial institutions. Kingston provided a large contribution of capital to help form this company a year before its creation, when on March 12, 2014, he sent a \$10,000,000 wire to an account Garanti Bank, which was used as seed capital. About a year later, specifically on April 28, 2015, Jacob Kingston loaned the fledgling company \$15,000,000 to increase its net capital. Kingston owns over 99% of the company's shares and functions as its Chairman of the Board of Directors. Turkish law requires that companies of this type have five directors, and Mega has four directors in addition to Kingston, who is the fifth. Located solely in Istanbul, Turkey, Mega remains a going concern. Based on an interview of another member of the Board of Mega, Kingston's capital investment in, and loan to, the company are currently part of the company's operating capital. In other words, the funds are not liquid, and cannot be payable to Kingston at this time or at any time in the foreseeable future.

In addition, Jacob Kingston was a part owner of SBK Holdings USA, until he stopped being an owner in that company several years ago. In addition, Kingston invested jointly with a

⁶ This and other information about foreign investment in Turkey can be found at the Turkish government's website, invest.gov.tr.

second entity, SBK Holdings A.S., a Turkish limited liability company based in Istanbul, Turkey (hereinafter SBK Turkey). SBK Holdings USA and SBK Turkey are not structurally connected. For instance, Kingston has no ownership interest in SBK Turkey and never had one. However, he did send \$10,000,000 to SBK Turkey for a joint investment with that company.

In addition, Jacob Kingston is a partner in a chemical production company called Komak Isi Yalitim Sistemleri, which manufactures insulation for residential and business structures. Accordingly, there are a number of wire transmissions from Washakie to Komak as part of this business venture.

Kingston also owned a company called Teknoloji Sistemleri, based in Turkey, which was a service supplier to point of sales machines used by banks. Unlike Mega, which is a company in the regulated banking sector, this company is not regulated. Therefore, Kingston is permitted to own the company and not be a member of the Board.

In addition to investing in business interests directly, Jacob Kingston has also invested in Turkish businesses through a private equity fund called Isanne S.A.R.L, which is a private equity fund based in Luxembourg that specializes in investing in Turkish businesses. He has sent several wires to Isanne as part of these investment ventures.

Kingston also sent wires to a company called Dogadogan, which is akin to a travel agent, and is involved in booking vacations and related expenses. Accordingly, the Court will see wires to this company.

In sum, while Kingston does have business interests in Turkey, he is no different from other business-people who have diversified their holdings between domestic and international opportunities. Also, while the total amount that has been invested in Turkish business interests is

substantial, these funds are being used as working capital by the businesses in which this investment has been made.

As a final point, it should be noted that each and every transaction to the Turkish entities was made openly, through a bank, in the true name of the person sending the funds. There was never an attempt to hide, disguise or change the nature of the money being transacted. Moreover, the entities receiving the funds were wholly legitimate. Far from being a scheme to obfuscate, the transactions to the entities in Turkey were conducted legitimately, in the open, and for everyone to see.

After a close examination, therefore, of Kingston's trip to Turkey, Malaysia and back to Salt Lake City in August 2018 and of the true nature of the transactions with the Turkish entities, there is simply no evidence that he was fleeing or that he has set himself up to flee from this case.

So, the question is not whether Dr. Kingston has traveled to Turkey, knows people in Turkey or has made investments in Turkey. The question is rather whether he realistically can flee to, and remain in, Turkey to avoid this case. In answering this question, we start with a central

fact—specifically that Jacob Kingston is a citizen of the United States and the United States alone. He is not a citizen or a resident of Turkey. He has no legal status in Turkey. When he traveled to

Turkey, he did so the same way every U.S. citizen travels to Turkey: by applying online for a Visa, paying the fee for such Visa, and presenting the Visa along with a valid U.S. passport at Turkish customs to gain entry to the country. There is no evidence in this record, aside from baseless speculation, that Turkey would permit Kingston, a U.S. citizen, to reside in Turkey to avoid this prosecution. On the contrary, the evidence is compelling that without possession of a valid U.S. Passport, Kingston cannot enter or remain in Turkey.

Also, the Government misses the point by phrasing the issue as one of extradition, and whether or not Turkey will extradite Dr. Kingston. Extradition applies when someone has legal status to remain in one country but is wanted in a second country due to a criminal prosecution. The concept of extradition does not apply here because Dr. Kingston, as a U.S. citizen, will not have legal status to remain in Turkey.⁷ Rather, he would be deported as being a citizen of another country who lacks legal status to remain in Turkey. So, it is completely irrelevant whether Turkey extradites people wanted by the United States. The relevant inquiry is whether Dr. Kingston, as a non-Turkish citizen, can remain in Turkey indefinitely consistent with Turkish law. The answer to this question is a resounding “no.” As a U.S. citizen, after his 90-day Visa expired, he would be forced to leave Turkey. That Kingston has business interests and investments in Turkey gives him no greater right to remain in that country than any other U.S. citizen. Simply put, after the expiration of his 90-day Visa, Kingston would be expelled from Turkey. However, this is irrelevant because without a valid U.S. passport in his possession, he could not enter Turkey.

Also, there is also no realistic, fact-based reason offered for high-ranking Turkish government officials agreeing to violate the country’s own deportation laws for the sake of safeguarding Jacob Kingston. A photograph of Kingston with the Turkish President and others to commemorate a sizeable business investment means nothing about whether Kingston can live there as a U.S. citizen to avoid this case. The fact that U.S. Presidents may take photographs with numerous people does not mean any of the people in the photographs should expect favors from our government, including U.S. residency or citizenship. The reality is that Kingston cannot enter

⁷ Extradition would be a relevant consideration only if Kingston was a Turkish citizen. However, he is not. He is a citizen of the United States alone. Therefore, he is subject to deportation from Turkey.

Turkey without a valid U.S. Passport; he cannot remain in Turkey as a U.S. citizen; and nothing the Government has offered changes these two immutable facts.

An additional point showing that Kingston has no inclination to flee is the fact that he has known of the Government's active Grand Jury investigation for three years. If he was going to flee, which he is not, he would have done so in February of 2016. Kingston did not flee in 2016 or at any other time for the same reason he will not flee now. In fact, Kingston has taken the following trips to Turkey and Malaysia since the warrants were executed in 2016:

- May 2016 to Istanbul, Turkey
- October 2016 to Kuala Lumpur, Malaysia
- October 2017 to Kuala Lumpur, Malaysia
- November 2017 to Istanbul, Turkey
- November 2017 to Singapore
- January 2018 to Kuala Lumpur, Malaysia
- February 2018 to Istanbul, Turkey
- April 2018 to Istanbul, Turkey
- April 2018 to Kuala Lumpur, Malaysia
- April 2018 to Singapore
- June 2018 to Turkey

(See Exhibit 3, Travelocity Trip Summary.)

Kingston has demonstrated his clear intent to fight this case and to prevail in court. This is not merely the assurance of his lawyer; this is the demonstrated actions of Kingston in the face of the criminal investigation.

The Government Has Not Proven Witness-Tampering

The Government's proffered evidence of witness-tampering is communications between Jacob Kingston and a person whom the Government admits is "catfishing" Kingston, specifically making up facts to trick Kingston or to steal his money several years ago. The Government knows there is no actual Grand Jury witness or other potential witness that is potentially being threatened or coerced. Rather, it is the Government's theory that this is a ruse orchestrated by Kingston's supposed associate. So, as we analyze the Government's purported evidence of witness tampering, we start from the agreed-upon standpoint that there is no witness, there is no actual tampering, and that the person communicating with Kingston is making the whole thing up, "catfishing" Kingston, as the Government states in its detention memo.

Once it is known that the Government's entire premise is that the person with whom Kingston is speaking is fabricating the situation, purportedly to "catfish" Kingston – to defraud him to get his money – the Government's concern about witness tampering indelibly changes.

Also, if the Government had such powerful evidence of witness tampering, it would have charged Kingston with the crime of witness tampering. It is significant that while the Government purports to have compelling evidence of witness tampering, it has not indicted anyone for this crime. The only reasonable conclusion is that the Government does not in fact have such powerful evidence of witness tampering. Rather, the Government seeks to invite the court to draw conclusions as to what certain written messages may or may not mean. However, the Government is well aware that this is not solid evidence of the very serious transgression of witness tampering because they refuse to actually charge it as a crime.

Regardless of the merits of the Government's claims in this regard, the proposed conditions make it impossible that Kingston could tamper with or influence a witness. He will be locked in

his home, his contact with the outside world will be highly limited (in fact more limited than it is now), he is not permitted to use the internet, and there simply will not be any opportunity to tamper with or influence a witness, even if he was so inclined, which we contend he is not. So, to the extent that the Court has concerns about witness tampering, we believe we have fully addressed these concerns through our proposed conditions.

The Government Has Not Proven Dangerousness

The Government has the burden to prove dangerousness by clear and convincing evidence. Also, as noted, not only must the Government prove that the defendant is a danger in a general sense, it must prove by clear and convincing evidence that even with the proposed conditions in place, the defendant nonetheless continues to pose a danger to others or the community. The Government simply cannot bear this heavy burden.

Once the proposed conditions are in place, Kingston is plainly not a danger to anyone. Locked in his home, with an electronic monitor, unable to use the internet, unable to communicate with anyone other than his immediate family and his lawyers, Jacob Kingston is no longer a danger, if indeed he ever was one, which we obviously dispute. It is also worth noting that as an inmate, he has access to a broad array of family members through direct visitation and phone calls.

Therefore, if the concern is that Kingston will contact his family if released and exert some form of pressure on them, he can do that already if he was so inclined. In terms of Kingston's ability to communicate with others, the proposed conditions would in fact limit that potential contact, rather than increase it.

The Government's purported evidence of witness tampering is the same as its evidence of dangerousness. There is no evidence that any witness was at risk or that Kingston poses a danger of any kind.

Destruction of Evidence

We vigorously contest the suggestion that any evidence was destroyed at any time. The Government has not proven this allegation, and this allegation is inconsistent with the fact that the Government's searches turned up a great deal of documentation, records and physical items.

Regardless of the truth or falsity of the Government's allegation in this regard, however, this is irrelevant to the issues to be decided concerning Kingston's release on conditions. The Government's investigation into Kingston is now concluded. There are no document subpoenas outstanding. The Government cannot argue that releasing Kingston will increase the risk that evidence will be destroyed, as this is no longer relevant. The Government has all the evidence. It is now up to the Government to give what it has to the defense, not the other way around. Therefore, the Government's contention that evidence was destroyed during the investigative phase of this case is irrelevant to the issue of Kingston's release.

As a final point, this is yet another significant allegation of wrongdoing that the Government has seen fit to not charge as a crime. Plainly, if the Government had legally sufficient evidence that Kingston obstructed justice or destroyed evidence called for by subpoena, it would charge these transgressions as crimes. The fact that it has not speaks more clearly than anything the Government does say in its filings in this regard.

Jacob Kingston Deserves to Be Released on These Conditions

The proposed conditions are not only highly rigorous, they are tailored to the precise concerns raised by the Government and voiced by the Court in prior proceedings. Moreover, having our client in an environment where we can adequately review the colossal amount of evidence in this case promotes the overall fairness of this process. As we and other counsel have stated, this is an immense, sprawling, byzantine tax prosecution. There are millions of pages of

material to review and understand. The case also requires counsel to become expert in a very complex, often misunderstood area of tax law concerning EPA RINs and IRS tax credits, as well as gaining an understanding of the somewhat fascinating science behind the creation of biodiesel. More than many cases, this one requires the close working relationship between attorney and client in the review of the discovery. It would be disingenuous of counsel to say that it is impossible to accomplish this in a jail setting. But, it is a lot harder.

If the Bail Reform Act stands for any one thing, it is that criminal defendants are presumed innocent and should be released pending trial unless there are specific, factual, compelling reasons making it necessary that they be incarcerated pre-trial. Here, we have a United States citizen with a clean criminal record with a large family here in Utah. We also have a case that does not charge an offense carrying a presumption of incarceration. Therefore, the law weighs heavily in favor of releasing Jacob Kingston on appropriate conditions. The conditions proposed are indeed rigorous and would ensure his appearance in court when required and would also ensure that he not contact any potential witnesses. Also, releasing Kingston on these conditions allows him to more adequately defend this sprawling case.

Conclusion

For the reasons set forth above, we move this Court to release Dr. Kingston under the following conditions:

- (1) A \$10M bond signed by Dr. Kingston;
- (2) The bond will also be co-signed by 45 members of Kingston's family who exert powerful moral suasion over him, including all six of his adult children (the identities of whom will be provided in a non-public filing);
- (3) The bond will be fully secured by equity in real property owned by members of Kingston's family who again exert powerful moral suasion over him (the addresses will be provided in a non-public filing);

- (4) Kingston will be on full home incarceration at his home;
- (5) Kingston will be electronically monitored with a GPS device that will be attached to his body and will record and transmit his every movement;
- (6) Kingston's travel will be restricted to the District of Utah;
- (7) Kingston will surrender of all travel documents, and will not secure new travel documents;
- (8) Kingston's wife and children will surrender their travel documents and will agree to not secure new travel documents;
- (9) That Kingston shall not contact directly or indirectly any witness in this case; however, this does not limit the defense attorneys and their investigators from conducting appropriate defense investigation, consistent with the protective order signed by the Court;
- (10) That Kingston will not have contact with any of his current co-defendants aside from joint defense meetings attended by counsel; and
- (11) Strict pre-trial services supervision.

DATED this 4th day of January, 2019.

Respectfully submitted,

Brafman & Associates, P.C.

By: /s/
Marc A. Agnifilo, Esq., Of Counsel
Teny R. Geragos, Esq.

Bugden & Isaacson, LLC

By: /s/
Walter Bugden, Esq.

cc: All Counsel (via ECF)

Certificate of Service

I certify that on the 4th day of January 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system, which will send notice of electronic filing to counsel of record in this case.

/s/ Teny Rose Geragos
TENY R. GERAGOS

